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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,825	09/26/2003	Michael Ray McLaughlin	71609	8927

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EXAMINER

FIDEI, DAVID

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/672,825	Applicant(s) MCLAUGHLIN ET AL.	
	Examiner David T. Fidei	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) 40-51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/26/04, 10/18/04, 6/13/05</u> | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

1. Claims 40-51 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Applicant timely traversed the restriction (election) requirement in Paper filed January 9, 2006

Applicant's election with traverse of the restriction in is acknowledged. The traversal is on the ground(s) that no serious burden is presented in examining all the claims. This is not found persuasive because;

“For purposes of the initial requirement, a serious burden on the examiner may be prima facie shown if the examiner shows by appropriate explanation either separate classification, separate status in the art, or a different field of search as defined in MPEP § 808.02. That prima facie showing may be rebutted by appropriate showings or evidence by the applicant.”, see MPEP § 803.

2. Applicant has not provided any showings but merely alleges there is no serious burden. Insofar as the criteria for restriction practice establishes, there is a prima facie showing provided in the initial holding and the application could be subject to further restriction given the large number of claims.

The requirement is still deemed proper and is therefore made FINAL.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the embossed region must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

5. Claims 9, 17, 19, 27, 28 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Each of these claims recite trademark.

It is important to recognize a trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. See definitions of trademark and trade name in MPEP 608.01(v).

A trademark or trade name used in a claim as a limitation to identify or describe a particular material or product does not comply with the requirements of 35 USC 112, second paragraph. Ex parte Simpson, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. In fact, the value of the trademark or trade name would be lost to the extent that it became descriptive of a product, rather than used as an identification of a source or origin of a product. Thus, the use of a trademark or trade name in a claim to identify or describe a material or product would not only render a claim indefinite, but would also constitute an improper use of the trademark or trade name.

If the trademark or trade name appears in a claim and is not intended as a limitation in the claim, then the question of why it is in the claim arises and whether or not its presence causes confusion as to the scope of the claimed subject matter.

In claims 27 and 28, applicant's incomplete statement of increased weight, for a corresponding volume, is a nonsequitor conclusion. Otherwise stated taking a fixed volume of feathers weighing one pound and compressing the features to half the size still results in a weight of one pound of compressed features.

As to claim 29, "the flatness" of the package has no antecedent basis.

In claim 30, "the height" and "the center" also have no antecedent basis.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-3 and 5-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Lassiter (Patent no. 2,814,382). A bale comprising a sealed chamber is disclosed in figures 1-5 that are evacuated thereby having a pressure less than ambient, meeting the limitations of these claims, see col. 4, lines 15.

As to claim 3, the initial pressure of the chamber reduced by pulling a vacuum of 27 to 28 inches of mercury; see col. 4, lines 56, 57. This translates to 91.4 to 94.8 kilo PASCALS, which is within the claimed range.¹

As to claim 5 an evacuator 16 is disclosed.

As to claims 7 and 9, Lassiter discloses polyamides² in col. 4, lines 33-37.

As to claim 10, the walls may be made with paper laminated to aluminum or metal in col. 4, lines 27-32 with a transparent wall portion for the reason of observing the visual humidity indicator. In that embodiment the walls comprises a polymeric material formed by the window along with a moisture barrier formed by the aluminum or metal. Alternatively, the transparent plastic bag can be considered as including walls where the moisture barrier element is molecular film composition.

8. Claims 1, 2, 4-11, 14-20, 23-29 and 31-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Dunbar et al (Patent no. 3,458,966). A package is disclosed in figures 2-3 that are evacuated thereby having a pressure less than ambient. The internal volume comprises fibers.

¹ Calculations base on 760 mm of mercury = 101.325 kilo PASCALS (standard atmospheric pressure value)

² A synthetic polymeric resin, dictionary.com.

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As to claims 4 and 14, the package appears substantially cuboidal shape.

With regard to claims 5 and 15, an evacuator is formed in at least one of the walls by fluid removal means.

With respect to claims 6, 7, 8, 9, 16, 17, 18, 19 and 23, Dunbar et al discloses a polyethylene enclosure comprising a bag in col. 4, line 9.

As to claims 24-28, discloses the uniform cells of the fibrous material that are compressed as a result of pulling a vacuum in the package, see col. 4, lines 59-62. A result one would naturally expect. In col.6, lines 62 to 54 Dunbar describes a test where increases by a roll reduced from 30 inches to 21, a factor of 1.43, well within the claimed range of 1.1 to 1.5. In as much as is understood by what the claims can purport, the increase in density also increases weight to volume ratio by the same corresponding factors. Hence claims 27 to 28 can represent nothing novel.

As to claim 29, "the flatness" inherently increases as a result of pulling a vacuum therein.

As to claim 31, an additional packaging material 25, 33 are disclosed.

9. Claims 11, 14-21, 23-25, 27, 29 and 32-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Davis (Patent no. 5,097,956). A package is disclosed in that comprises a sealed chamber with the contents maintained under pressure less than atmospheric, see col. 4, lines 60-61. The granular material enclosed is disclosed a coffee, e.g., see col. 1, line 11. According to "Prevention of colonic aberrant crypt foci and modulation of large bowel microbial activity by dietary coffee fiber, insulin and pectin", by Rao CV, Chou D, Simi B, Ku H, Reddy BS, printed in Carcinogenesis. 1998 Oct;19, coffee includes a fiber fraction as constitute component. Hence Davis meets the volume comprising fibers in a much as is claimed.

As to claim 14, the package of figure 1 appears substantially cuboidal shape.

With regard to claim 15, the mouth tube of figure 7 as well as the channels between the layers forms an evacuator.

With respect to claims 16, 17, 18, 19, 20 and 21, Davis discloses a polyethylene, nylon along with metalized polyester as barrier elements in col. 5.

As to claim 29, "the flatness" is described in col. 4, lines 67 and 68 of Davis.

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As shown in figure 3, the bulges formed by the seals between passages 48-58 comprise the embossed regions in as much as is recite in claim 32.

As to claims 33-39, means for evacuating is formed by the laminated channels of the laminate along with the open area of the mouth. Also a plurality of walls is includes means for sealing provided by heat bonding.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 12, 13, 22 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunbar et al (Patent no. 3,458,966) as applied to claims 1, 2, 4-11, 14-20, 23-29 and 31-39 above, and further in view of Lassiter (Patent no. 2,814,382). The difference between the claimed subject matter and Dunbar resides in the chamber having a pressure less than 101 kilo PASCAL's. As noted above Lassiter discloses that it is long known to those skilled in the packaging art to vacuum seal bulk containers to such pressures. It would have been obvious to one skilled in the art at the time the invention was made to provide an internal chamber with having a vacuum pulled to less than 101 kPa, in order to reduce the size of package for shipping and handling.

As to claim 12, employ fibers that comprise acetate is considered a matter of design choice as one skilled in the art can practically package any fibrous material desired with the particular material merely being the type of product one desires to package. Also, the particular material package is not seen as imparting any specific criticality or causes the package to function in any unobvious mode. Accordingly, the implementation of acetate fibers would have been within the level of ordinary skill.

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As to claim 22, the use of gas barrier layers comprising aluminum is notoriously old and well known in the packaging art. Particularly in laminated films. So much that Official Notice is taken for this concept. It would have been obvious to one skilled in the art at the time the invention was made to modify the enclosure 15 of Dunbar by including a gas barrier element comprising aluminum in view of Official Notice, in order to preserve and maintain the integrity of the sealed chamber.

As to claim 30, it would have been an obvious matter of design choice to the height of the center of a top wall is less than 3 cm greater than the height of an edge of the top wall, since such a difference (if any) would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). Also, it has been held that where the only difference between the prior art device and the claimed device was a recitation of relative dimensions, the claimed device was not patentably distinct from the prior art device, Gardner v. TED Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. Denied, 469 U.S. 830, 2325 USPQ 232 (1984), see M.P.E.P. 2144.04 (IV).

REPLY BY APPLICANT OR PATENT OWNER TO THIS OFFICE ACTION

12. "In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to every ground of objection and rejection in this Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. The applicant's or patent owner's reply must appear throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. The reply must be reduced to writing (emphasis added)", see 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

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Pointing out specific distinctions means clearly indicating in the written response what features/elements or distinctions have been added to the claim/claims, where support is found in the specification for such recitations and how these features are not shown, taught, obvious or inherent in the prior art.

If no amendments are made to claims as applicant or patent owner believes the claims are patentable without further modification, the reply must distinctly and specifically point out the supposed errors in the examiner's action and must respond to every ground of objection and rejection in the prior Office Action in the same vain as given above, 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

The examiner also points out, due to the change in practice as affecting final rejections, older decisions on questions of prematurity of final rejection or admission of subsequent amendments do not necessarily reflect present practice. "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)" (emphasis mine), see MPEP 706.07(a).

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The Official Fax number to file responses to this Office Action is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David T. Fidei
Primary Examiner
Art Unit 3728

dtf

March 31, 2006